

A.G. Contract No.
ECS File: JPA 96-150
Project: F-053-1-(50)
TRACS. 87 MA 178 H 4341 01C
Section. SR 87; McDowell Rd.-Shea Blvd.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE SALT RIVER PIMA MARICOPA COMMUNITY

THIS AGREEMENT is entered into _____, 1996
pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF
TRANSPORTATION (the "State") and the SALT RIVER PIMA MARICOPA
COMMUNITY acting by and through its Community Council, (the "SRPMIC")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The SRPMIC is empowered by Council Resolution, a copy of which is attached hereto and made a part hereof, and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the SRPMIC.

3. It is to the mutual advantage of the State and the SRPMIC to landscape certain areas within the right of way on SR 87 including two entry monuments at the following location:

From centerline roadway station 408+75 (McDowell Road), to centerline roadway station 983+39 (Shea Blvd.), a net distance of approximately 10.9 miles.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The SRPMIC will prepare landscape architectural and traffic control plans in metric for the landscaping and irrigation project in accordance with ADOT's specifications and submit them to the State for approval

2. After State approval of the plans, the State will advertise for bid and award a construction contract. ADOT will administer the construction.

3. SPRMIC will make all payments under the construction contract, by paying the amount due to ADOT within five days after submission of any estimate by ADOT. At the completion of the work, SRPMIC will invoice the State for the costs of the completed work in the lesser amount of \$37,000.00 or the amount paid to the construction contractor. The State funds will not exceed \$370,000.00 regardless of the actual cost of the work under the construction contract, including any claims, adjustments, add-ons, or changes.

4. Prior to the beginning of work the contractor will prepare and submit to the State for approval a Traffic Control Plan which will be implemented and strictly complied with while the contractor is doing work within the State right-of-way of SR 87.

5. The SRPMIC will provide the State with a \$10 million liability insurance policy, with the State named as an additional insured, prior to start of work.

6. The SRPMIC shall furnish and install necessary water services from water mains to the designated locations within the right of way at the Tribe's expense.

7. The SRPMIC shall furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at the SRPMIC's expense.

8. After construction, the SRPMIC shall maintain the irrigation system including all testing, adjusting, repairing and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system.

9. The SRPMIC hereby agrees to maintain the landscaping. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the project. The SRPMIC will not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual."

10. The State will pay the SRPMIC within 30 days after receipt and approval of the invoice described in paragraph 3 above, in a total amount not to exceed \$370,000.00.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the effective date, unless this Agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future, except the SRPMIC's agreement to maintain the irrigation system and the landscaping is perpetual. This agreement will be automatically renewed for successive periods of five(5) years unless either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon sixty (60) days written notice. If SRPMIC fails to make any timely payment in accordance with paragraph 3 of the scope of work above, the State May immediately terminate the construction contract; and any and all damages, claims and liabilities of any kind including costs and attorney fees, shall be payable by SRPMIC. It is understood and agreed that, in the event this agreement is terminated by the SRPMIC, the State shall in no way be obligated to maintain said landscaping, and all costs, claims and/or liabilities of any kind arising from the termination will be borne by SRPMIC.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereby agree to submit to arbitration with the American Arbitration Association. SRPMIC agrees that any arbitration award May be confirmed by an action in the Superior Court of Arizona and the SRPMIC expressly agrees that the Superior Court of Maricopa County shall have jurisdiction over any confirmation proceedings.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E, Room 222
Phoenix, AZ 85007

Salt River Pima-Maricopa Community
Chairman
10005 E. Osborn Rd.
Scottsdale, AZ 85256

7. Attached hereto is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**SALT RIVER PIMA-MARICOPA
COMMUNITY**

STATE OF ARIZONA
Department of Transportation

By _____
IVAN MAKIL
President

By _____
PETER L. ENO
Contract Administrator

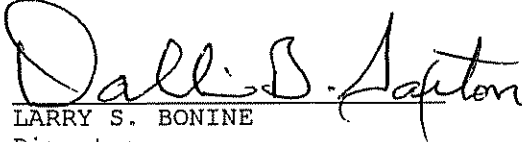
ATTEST

By _____
LONITA JIM
Secretary

RESOLUTION

BE IT RESOLVED on this 9th day of October 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, enter into an agreement with the Salt River Pima Maricopa Community for the purpose of defining responsibilities for the preparation of landscape architectural and traffic control plans and the landscaping of the right-of-way on SR 87.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


for LARRY S. BONINE
Director



ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION

MEMORANDUM

TO: Dick Wright
Deputy State Engineer (102A)

FROM: Joe Acosta, Jr.
Assistant Attorney General

DATE: October 18, 1996

RE: State Route 87 Agreement with SRPMIC

I have reviewed the draft of the State Route 87 Agreement, and I would suggest the following for the first three paragraphs:

1. The SRPMIC will prepare landscape, architectural and traffic control plans in metric for the landscaping and irrigation project in accordance with ADOT's Specifications and Standards and submit them to the State for approval.
2. After State approval of the plans, the State will advertise for bid and award a construction contract. ADOT will administer the construction.
3. SRPMIC will make all payments under the construction contract, by paying the amount due to ADOT within five days after submission of any estimate by ADOT. At the completion of the work, SRPMIC will invoice the State for the costs of the completed work in the lesser amount of \$370,000 or the amount paid to the construction contractor. The State funds will not exceed \$370,000 regardless of the actual cost of the work under the construction contract, including any claims, adjustments, add-ons, or changes.

In paragraph 4 of the Scope of Work: Strike the word "SRPMIC's."

In paragraph 10 of the Scope of Work: Remove "an invoice" and replace it with "the invoice described in paragraph 3 above."

Memo Dick Wright
October 18, 1996
Page 2

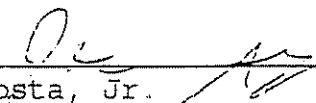
In the Miscellaneous Provisions, in paragraph 2, at the end of the first sentence after the word "future" add: ", except the SRPMIC's agreement to maintain the irrigation system and the landscaping is perpetual."

After the next to last sentence in paragraph 2 of the Miscellaneous Provisions, add the following: If SRPMIC fails to make any timely payment in accordance with paragraph 3 of the scope of work, above, the State may immediately terminate the construction contract; and any and all damages, claims, and liabilities of any kind including costs and attorneys fees, shall be payable by SRPMIC."

After the end of the last sentence of paragraph 2 add after the word "landscaping" the following: ", and all costs, claims, and/or liabilities of any kind arising from the termination will be borne from by SRPMIC."

Paragraph 5 of the Miscellaneous Provisions should read: "In the event of any controversy which may arise out of this agreement, the parties hereby agree to submit to arbitration with the American Arbitration Association. SRPMIC agrees that any arbitration award may be confirmed by an action in the Superior Court of Arizona and the SRPMIC expressly agrees that the Superior Court of Maricopa County shall have jurisdiction over any confirmation proceedings."

In paragraph 7 of the Miscellaneous Provisions "council" should be replaced with "counsel."



Joe Acosta, Jr.

JNA:adf

#1611